

MEMORANDUM OF UNDERSTANDING**between****CALIFORNIA RESOURCES AGENCY,
Department of Fish and Game****and the****DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service****on the****PACIFIC COASTAL SALMON RECOVERY FUND****Section 1. Purpose**

The intent of this Memorandum of Understanding (MOU) among the California Resources Agency (hereinafter referred to as "Agency") by and through the Secretary for Resources (hereinafter referred to as "Secretary"), the Department of Fish and Game (hereinafter referred to as the "Department") (collectively these parties may be referred to as California "State"), and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) is to provide for the orderly and effective State allocation of funding from the federal Pacific Coastal Salmon Recovery Fund to support eligible projects. Specifically, this MOU will provide a framework for how the funding, as authorized by Congress for the State on an annual basis in 16 U.S.C. 3645(d)(1), from the Pacific Coastal Salmon Recovery Fund (PCSRF) and transferred to the California Department of Fish and Game for use in the California Coastal Salmon Fisheries Restoration Grant Program (FRGP) will be used for funding eligible projects. This MOU will only apply to the above allocation.

The State will ensure that the FRGP will only select projects that protect and restore and involve research regarding the anadromous salmonid species in California coastal rivers and streams, including the Klamath/Trinity River Basins.

Further, it is the intent of the parties to this MOU to encourage comprehensive conservation planning efforts that support coastal salmon recovery.

Section 2. Authority and Reference

(a) Nothing herein grants any party to this MOU powers and authorities that they do not otherwise possess under the constitutions, statutes, laws, and rules of the State of California or of the United States.

(b) Nothing herein limits or affects in any way the controlling authorities or obligations of the parties to this MOU.

(c) The authority for NMFS to enter into this MOU is 16 U.S.C. 1531 et seq. (the Endangered Species Act). NMFS also enters into this agreement in furtherance of 16 U.S.C. 3645(d)(2) and Congressional intent and authorizations for the PCSRF. The authority for California to enter into this MOU is Fish and Game Code sections 1501, 1501.5 and 1802.

(d) This MOU supersedes the prior MOU and amendments previously implemented between NMFS and the State regarding PCSRF.

Section 3. Principles

The following principles will be used to guide the selection of projects and allocation of funds for the FRGP:

(a) All projects shall be in furtherance of the goal of restoring anadromous salmonid species including the protection and restoration of and research on their freshwater and estuarine habitat.

(b) All parties are committed to funding projects that are biologically and technically sound and will provide measurable benefits to salmonids and their habitat. The State places a high priority on development of a scientific process to guide restoration efforts. The Department is committed to the development of a scientific framework in concert with other public agencies and stakeholders to develop a comprehensive strategic program.

(c) The parties are committed to a process that is open, accountable and considers the interests of the public.

(d) Project proponents are encouraged to contract with local entities to assist with implementation.

Section 4. Geographical Range

Projects must be located in coastal areas from the Mexican border to the Oregon border (excluding the Central Valley upstream from the Carquinez Bridge) for all streams that support, have supported or could support anadromous salmonids.

Section 5. Project Selection Process

- (a) The funds will be allocated to projects awarded through a competitive process. The Department will issue an annual Solicitation for projects which will reflect the applicable guidelines in this MOU. The projects submitted will be reviewed by a Technical Review Team and then the California Coastal Salmonid Restoration Grant Peer Review Committee (Peer Review Committee) with the final recommendations given to the Director. The Technical Review Team and Peer Review Committee are defined in Section 5 (c) and (d) respectively.
- (b) Proposals will be accepted from public agencies (including counties, cities, water districts and Resource Conservation Districts), private entities, non-government organizations, applicants to the NMFS Community Based Restoration Program, and Pacific Coastal tribes (as defined by the Secretary of Commerce).
- (c) The Director of the Department shall convene the Technical Review Team for the FRGP consisting of Department technical staff, potential State funding partners, other State department staff as needed; and National Marine Fisheries Service staff. The Technical Review Team will initially evaluate the projects based on technical merit and present a list to the Peer Review Committee (see Section d).
- (d) The Peer Review Committee will use the Principles described in Section 3, supra, and the Selection Criteria in Section 6 to develop a prioritized list of project proposals. Composition of the Peer Review Committee shall be as outlined below.

The Peer Review Committee shall be appointed by the Director of Fish and Game and shall be made up of the following members:

- 4 members recommended by the Citizens Advisory Committee on Salmon and Steelhead. This membership will include a representative from the north, central and southern portions of the coastal regions.
- One member of the scientific academic community with expertise in anadromous fisheries restoration recommended by the Citizens Advisory Committee on Salmon and Steelhead.
- One community watershed practitioner.
- One member from the conservation community.

- 4 members representing the counties (one member from each of the following areas-
~~Northern counties (nominations accepted from the 5 Northern County Group).~~
Central counties (nominations accepted from Fish Net 4C).
South central counties (San Luis Obispo, Ventura and Santa Barbara-
nominations accepted from the South Central Regional Fish Advisory Group.
Southern counties (Los Angeles, Orange and San Diego nominations accepted from joint nominations from the Board of Supervisors of Los Angeles, Orange and San Diego Counties).
- One person representing the public water agency interests to be nominated by the Association of California Water Agencies (ACWA).
- One person representing timber interests.
- One person representing agricultural interests.

The following members shall be ex-officio: Department (chair), California Resources Agency, National Marine Fisheries Service, California Coastal Conservancy, State Water Resources Control Board, and other departments appointed by the Secretary.

- (f) The Peer Review Committee shall provide to the Director a list of project proposals within 60 days from the convening of the Peer Review Committee. Following consultation with the Secretary, the Director shall make the final determination within 30 days of submission of the prioritized list.

Section 6. Selection Criteria:

The performance goals of the PCSRF will be carried out by the State of California by conducting the following types of salmonid recovery projects: salmonid habitat protection and restoration; enhancement; research and monitoring; watershed planning and assessment; and public outreach and education. Accordingly, a project shall be funded if demonstrated to provide sustainable and measurable benefits for salmon and their habitats through the conduct of one of these types of projects. Funded projects will be consistent with Congressional authorizing language, by promoting recovery and conservation of salmonid populations, especially those listed under ESA or those at risk of listing because of declining status. Restoration and protection of habitat that supports ESA-listed populations and implementation of recovery plans will be of central importance.

All projects must:

- Be scientifically and technically sound.
- Have permission from the landowner, where applicable.

The following criteria will be used to further prioritize projects for funding. Projects are not required to meet all the criteria below. The Peer Review Committee may choose to give greater weight to individual criteria.

1. The project demonstrates that it will remediate a known factor limiting salmonids.
2. The project supports one or more of the priorities listed in Exhibit A.
3. The project is capable of relatively immediate implementation.
4. The project contracts with non-profit, for-profit and public entities in the region of the project whenever possible to assist with implementation if needed.
5. The project is cost effective.
6. The project demonstrates that it will provide measurable benefits to the conservation and recovery of salmonids.
7. The project is identified as high priority based on an adopted watershed assessment or a salmonid restoration/recovery plan if one is available.
8. The project is important from a regional/statewide perspective.
9. There is demonstrated local area stakeholder support.
10. The project demonstrates voluntary management measures for a significant land area within the watershed.
11. The project is durable (it will be monitored and maintained).

Section 7. Mitigation

The FRGP shall not include any project that is required mitigation under the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA), the California Forest Practices Act (FPA) or Section 404 of the Clean Water Act (CWA) for a separate project with environmental impacts. Projects would be eligible for funding if they satisfy the provisions of the MOU and are in compliance with existing laws, but are being proposed to meet subsequent changes in those laws.

Many projects that are otherwise eligible for these funds will require NEPA/CEQA or CWA 404 permits to proceed. Nothing in this provision shall be construed to exclude these projects from funding because such permits or processes are required.

Section 8. Adaptive Management Funds

No more than 10% of the total monies available to the FRGP in a given year may be allocated for projects at the discretion of the Director and as recommended by the Peer Review Committee. For projects costing less than \$25,000, the funding shall not be reviewed by the Technical Review Team or the Peer Review Committee. For projects costing over \$25,000, the funding shall be subject to review by the Peer Review Committee. These Adaptive Management Funds are

intended to facilitate implementation of time-sensitive on-the-ground projects or other unique opportunities that otherwise don't lend themselves to the Annual Solicitation for Projects.

Project selection will be based on the Principles outlined in Section 3, supra, Criteria in Section 6, and program priorities in Exhibit A.

Section 9. Incidental Take

This MOU does not address or authorize incidental take of listed anadromous salmonids that may result from the implementation of any project funded through this MOU.

Section 10. Administration

- (a) The Secretary designates the Department as the lead department to receive the specified funds, administer the FRGP, and carry out the terms of this MOU.
- (b) This MOU does not constitute a financial commitment on the part of any party. Financial support shall be subject to the budgetary and administrative procedures of NMFS and the State. The Department shall submit applications each year for federal assistance to NOAA in accordance with federal grant requirements.
- (c) No more than 3% of the Federal funds shall be available for administrative costs. Administrative costs includes activities such as State overhead, subcontract management, and administrative staffing costs necessary to deliver the program. As the Department administers its grant program, the majority of the grant administration occurs prior to the disbursement of grant funds. Therefore, the Department is allowed to draw down the PCSRF administrative funds as needed, so long as the Department expends no more than three percent on PCSRF administration relative to the total Federal direct costs at the end date of the grant award.
- (d) It is recognized that three percent is not sufficient funding for effective and expedient administration of a grant program or single activity of this size. Thus, the Department will integrate administration of PCSRF funds received by the State into its grant administrative program. NMFS recognizes Department as a single indirect cost activity according to the OMB Circular A-87 Attachment B at 8.h (2) that states "no further documentation is required for the salaries and wages of employees who work in a single indirect cost activity." The Department will document administrative costs charged to the State and administrative costs charged to the PCSRF with the submission of the SF 269 and 272 financial reports. Thus, the State, as part of their

required match, will provide additional administrative support for this program.

- ~~(d) The State shall provide a 25% non-Federal match to the PCSRF funds.~~
Existing State fund sources, including but not limited to Commercial Salmon Stamp Account, Steelhead Trout Restoration Account, and eligible projects funded by the California Coastal Conservancy, and the Wildlife Conservation Board, may be used as State match monies.

Section 11. Reporting and Monitoring

- (a) The Department will update the NMFS PCSRF database as new or modified project information becomes available, or as least quarterly, so the PCSRF database contains accurate descriptions and performance metrics for all completed, ongoing, and proposed projects.
- (b) On a quarterly basis, the Department will download and complete the PCSRF fiscal verification report and submit it to NMFS.
- (c) The Department shall comply with all applicable state laws and regulations in administering the FRGP, including distributing the funds and tracking expenditures.

Section 12. Amendments and Termination

- (a) This MOU is effective as of the date it is signed by all parties.
- (b) The MOU may be amended at any time by written agreement between the Secretary, the Director of the Department and the Regional Administrator of NMFS. Any significant amendments to this MOU shall be subject to public review. This MOU may be terminated by either the Secretary, the Director of the Department or the Regional Administrator of NMFS upon six months written notice to the other Party.
- (c) The obligations of the parties to this MOU are contingent upon appropriation of necessary funds by the Congress of the United States, with respect to NOAA/NMFS, and the California State Legislature with respect to California, and subject to budgetary limitations which may arise.
- (d) In the event a dispute arises involving the terms of this MOU, the Secretary, Director of the Department, and the Regional Administrator of NMFS shall meet and resolve the matter.
- (e) This MOU is not intended to confer benefits upon, or be subject to enforcement by third parties.

(f) If any part of this MOU is determined to be in violation of law, all other parts
~~not so determined shall remain in full force and effect.~~

Mike Chrisman

Mike Chrisman
Secretary for Resources
State of California

7/1/05

Date

Ryan Broddrick

Ryan Broddrick
Director
Department of Fish and Game

6/29/05

Date

Rodney R. McInnis

Rodney R. McInnis
Regional Administrator
Southwest Region, NMFS

6-13-05

Date

Exhibit A.

~~Eligible Projects: The following are examples of project types that would be~~
eligible for funding in the FRGP:

1. Fish passage improvement projects. (e.g., culvert repair and replacements, check dam/small dam removal, and construction of fishways):
2. Conservation easements and other incentive program projects that are consistent with the principles, screening criteria requirements, and other guidelines in this MOU.
3. Projects that protect and improve water quality and quantity, including acquisition of water from willing sellers.
4. Outreach and capacity building within regional/county efforts. (e.g., Fish Net 4C, 5 Northern County Group and south central and southern groups.)
5. Development of a scientific framework for future funding years.
6. Development and implementation of a coastwide monitoring framework.
7. Required engineering design work, road surfacing and other activities associated with the project will be allowed as an eligible cost, where the State uses existing granting authority under FGC 1501.5(b).
8. Research projects that advance the science of anadromous fish recovery and result in recommendations for restoration and management activities. This could include descriptions of fish population abundance, distribution, presence/absence and biological response to habitat modifications.
9. Monitoring projects that use protocols approved by DFG and NMFS that provide baseline and/or trend data for anadromous fish populations or physical factors known to be limiting their recovery.
10. Acquire from willing seller's permanent easement or fee title to riparian buffer strips along coastal rivers and streams to protect key salmon and steelhead refugia.
11. Upslope projects that protect and restore aquatic habitat, including remediation and erosion prevention and control projects.
12. Protection of key and refugia watersheds.
13. Projects that protect and restore riparian corridors.

14. Assessment projects, founded on accepted scientific methodology that will develop site-specific habitat protection or restoration prescriptions.
15. Education projects that directly support local salmonid habitat protection restoration and recovery efforts.
16. TMDL implementation plans (e.g., ranch plans).
17. In-stream habitat restoration projects, including large woody debris projects.
18. Artificial propagation programs designed to restore depleted stocks of salmonids that comply with the directives of the joint Department/NMFS hatchery operation review committee.
19. Data management and data processing projects to support the FRGP and required reporting to the NMFS PCSRF program, and are part of a consistent, state-wide information management strategy.
20. Programmatic permitting and monitoring projects that support the FRGP and transmit required reporting to the US Army Corps of Engineers, US Fish and Wildlife Service, NMFS, and the State Water Resources Control Board.
21. Protection of in-stream resources for salmon and steelhead habitat.